

# THE MARTHA'S VINEYARD COMMISSION

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## *Martha's Vineyard Commission Minutes for the Special Meeting of January 24, 2002*

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, January 24, 2002, at 7:30 p.m. in the large meeting room of the Chilmark Community Center, South Road, Chilmark, Massachusetts. At 7:40 p.m., Linda Sibley – a Commission member at large from West Tisbury and the Hearing Officer that evening – called the Special Meeting to order.

*[Commission members present at the gavel were: J. Athearn; J. Best; J. Greene; T. Israel; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Ms. Brown and Mr. Donaroma arrived at 7:47 p.m.]*

### **Public Hearing: Wild and Scenic North Shore DCPC – Conformance of Regulations with the MVC Guidelines.**

Ms. Sibley opened the Public Hearing on the Conformance of the Regulations for the Wild and Scenic North Shore District of Critical Concern with the Guidelines issued by the Commission. *[Note: The Wild and Scenic North Shore DCPC covers the Towns of Aquinnah, Chilmark, Tisbury and West Tisbury, and each of these Towns had drawn up its own set of Regulations.]*

Ms. Sibley explained the Hearing process and invited **Judy Crawford, Chairman of the West Tisbury Conservation Commission**, to provide a presentation on said Regulations. Ms. Crawford explained that she was there on behalf of the four Towns involved in this District, and she thanked the Commission, particularly DCPC Coordinator Jo-Ann Taylor, for their assistance in drawing them up.

"You made our job very easy," Ms. Crawford remarked, adding, "The Guidelines were so clear and concise and strict that we had little area where we had any decision to make. There were just a few areas we needed to look at very closely."

Ms. Crawford went on that the proposed Regulations followed the Commission's Guidelines almost word for word. She then outlined the differences among the various Town proposals for Regulations:

1. That each Town used slightly different language to describe the District boundaries;
2. The Special Permit Granting Authorities varied from Town to Town;
3. On advice of Counsel, the Towns of Aquinnah, Tisbury and West Tisbury had removed the word "lawful" in the phrase "any fill or structure in *lawful* existence" under "Permitted Uses," while Chilmark had not; and
4. Only the Town of Chilmark had specified the Conservation Commission's input as its Order of Conditions (the other Towns allowed for general input from the Conservation Commission).

After Ms. Crawford had explained the third difference outlined above, it occurred to Ms. Sibley that she had not read into the record the Notice of Public Hearing. *[See the Full Commission Meeting File of January 24, 2002 (the meeting file) for a copy of said notice.]* Ms. Sibley read the notice aloud, and then Ms. Crawford presented the fourth point. "Otherwise," she concluded, "everything is virtually the same from Town to Town."

Ms. Sibley referred the Commission members to the Staff Report entitled *Wild and Scenic North Shore DCPC – Supplemental Staff Notes (Taylor) for Public Hearing 01/24/02*. *[See the meeting file for a copy.]* She read aloud the "Staff Comments" and explained the purpose of the Hearing. Ms. Sibley then asked for testimony.

#### **Testimony from Town Boards and Officials.**

**Russell Walton, Chilmark's Conservation Officer and a member of the Chilmark Planning Board**, explained why his Town had chosen to retain the word "lawful" under "Permitted Uses." If any fill or structure was not lawful, he said, then its owners should not be eligible to apply for uses allowed by Special Permit.

Michael Donaroma, the Edgartown Selectmen's Appointee, asked if Mr. Walton was talking about pre-existing docks allowed under Chapter 90. "Yes," answered Ms. Sibley, "they're saying they can be maintained if they're lawful."

**Questions from Commission Members.**

Responding to a question from an unidentified female Commission member [Warner?], Ms. Crawford explained the meaning of "beach nourishment."

James R. Vercruysse – Commission Chairman and a member at large from Aquinnah – wished to clarify which Towns had deleted the word "lawful" under "Permitted Uses" and which had retained it. Ms. Crawford responded that the Towns of Aquinnah, Tisbury and West Tisbury had removed the word "lawful," while the Town of Chilmark had retained it. So in Chilmark unlawful piers can be maintained only after proper licensing? inquired the Chairman. Yes, answered Ms. Crawford.

Aquinnah Selectmen's Appointee Megan Ottens-Sargent wanted to know if there would be a Staff Report. Ms. Sibley replied that DCPC Coordinator Jo-Ann Taylor could not attend the Hearing that evening.

Andrew Woodruff, a Commission member at large from West Tisbury, asked if there were many unlawful piers in Chilmark. "Not that I know of," responded Mr. Walton.

Tristan Israel, the Tisbury Selectmen's Appointee, complimented the Board members from the four Towns, characterizing their efforts as a "model process of cooperation."

There being no more testimony, questions or comments, Ms. Sibley closed the Public Hearing at 7:55 p.m.

Kate Warner, the West Tisbury Selectmen's Appointee, took advantage of the break between Hearings to remind those in attendance about the Chapter 40B workshop scheduled for Saturday, January 26.

**Public Hearing: Amendments to the Boundary and Guidelines for the  
Menemsha-Nashaquitsa Ponds DCPC and the Conformance  
of the Town's Regulations with the Commission's Guidelines.**

*[The Commission members present for the second Hearing of the evening were: J. Best; C. Brown; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Mr. Athearn recused himself from this Hearing. (See below.)]*

The Hearing Officer read into the record the Notice of Public Hearing for a Hearing regarding 1) an Amendment to the boundary of the Menemsha-Nashaquitsa Ponds DCPC; 2) an Amendment to the Commission's Guidelines for the Menemsha-Nashaquitsa Ponds DCPC; and 3) the Conformance of the Town of Chilmark's Regulations with the Commission's Guidelines for the District. *[See the meeting file for a copy of said notice.]* Ms. Sibley explained that this was a Joint Hearing with the

Chilmark Planning Board, the members of which were sitting together just to the side of the Commission members.

James Athearn, a Commission member at large from Edgartown, recused himself from this Hearing because his family owned land along Stonewall Pond. He left the meeting room and did not return until after this Hearing had been closed.

Ms. Sibley explained the process upon which they were embarking: If the Commission did not vote to amend the Guidelines for the District, then the Regulations being proposed by the Town would not be in Conformance with the Guidelines.

**William J. Meegan, Chairman of the Chilmark Planning Board**, outlined how in the spring of 2001, his Town's Board of Selectmen, Conservation Commission and Planning Board had nominated the Menemsha-Nashaquitsa Ponds District and that the Commission had accepted that Nomination. With a one-year moratorium resulting, members of those boards had begun to "investigate, gather information, solicit opinions and advice regarding the Regulations for this District," he explained. After receiving that input, he continued, it was clear that the Town officials had been remiss in excluding from the DCPC Stonewall Pond, an important stock-producing area for scallops.

Mr. Meegan recounted how recently the Board of Selectmen had approved funds for a feasibility study for the dredging the ponds in the hope that this would increase productivity. Unfortunately, he remarked, the dredging would allow for bigger boats and the possibility of more pier requests for the pond. "So it is with these concerns in mind that we are seeking to address the prohibition of non-municipal piers," he said.

Ms. Sibley indicated that she was looking for testimony first on extending the boundaries of the District to include Stonewall Pond.

**A. Testimony on Amending the Boundaries of the District.**

**Warren Doty, Chairman of the Chilmark Board of Selectmen**, noted that a fellow Selectman, Frank Fenner, was present but that the other member of his board, Alexander Preston, was unable to attend the Hearing because he was running a budget meeting taking place at the same time. Mr. Doty remarked that in fairness to Mr. Preston, it should be recognized by the Commission members that "everything I'm going to say in the next five minutes, if Alex was here, he'd say the opposite." Thus, he said, he was not speaking for his board but for himself.

Jane A. Greene, the Chilmark Selectmen's Appointee to the Commission, asked for a Point of Order. "If he's speaking for himself, he shouldn't be speaking now," she said. Mr. Israel countered, "One could speak as a Town official not necessarily representing the entire board. I don't see that that's improper." After another objection from Ms. Greene and a short discussion, the Hearing Officer allowed Mr. Doty to proceed, noting that he had made it abundantly clear that he was speaking for himself.

Mr. Doty explained that, as Mr. Meegan had indicated, the Town wished to add Stonewall Pond to the District, its absence having been an oversight during the original Nomination process. "It's an integral part of the pond system, and it should be included," he said. He recounted how Town officials had met with shellfishermen and others and how it had been the majority opinion that the Town should do everything it could to prevent the construction of more docks. The ponds were a public resource, he emphasized, and not a private one.

"So it's my request that these [amended] Guidelines, which are stricter, that would prohibit the docks be allowed," concluded Mr. Doty.

Ms. Sibley wondered if a map of the District was available for the Commission members to look at. Bea Atkinson, the Assistant to the Chilmark Planning Board, brought one to Ms. Sibley and pointed to the original boundaries and the amended boundaries of the District.

Robert Zeltzer, a Commission member at large from Chilmark, pointed out that one would have to build a 150-foot dock in Stonewall Pond because it was so shallow. "They [the piers] don't exist, and in most cases they couldn't exist," he remarked. The Hearing Officer reminded him that this was the time to take testimony and not the time to debate.

**Pamela Goff of the Chilmark Conservation Commission** wanted to know if all that was being discussed at the moment was the Amendment to the District boundaries. Ms. Sibley replied in the affirmative, noting, "We should be taking these things one at a time." "The Conservation Commission was in favor of this," stated Ms. Goff.

The Hearing Officer then read into the record the "Staff Comments" on the boundary Amendment. *[In the meeting file see page 2 of the Staff Report entitled "Menemsha and Nashaquitsa Ponds DCPC - Supplemental Staff Notes (Taylor) for Public Hearing 01/24/02."]* Next, Ms. Sibley requested testimony on the Amendment to the District Guidelines.

**B. Testimony on Amending the Guidelines for the District.**

**Rick Karney of the Martha's Vineyard Shellfish Group** said, "I'd like to support this. I mean, we're talking about a biological system, and it doesn't make any sense why we would be protecting Quitsa and Menemsha and not include Stonewall. It's an integral part of the whole biological system."

The Hearing Officer then read into the record the "Staff Comments" on the Amendment to the Commission's Guidelines for the District. *[Ibid.]* She asked for testimony in favor of said Amendment.

**Richard Steves, Chairman of the Chilmark Conservation Commission**, stated, "We voted unanimously to support this change. I think we were remiss the first time around. [When w]e came to you, we had a watered-down version, and it was only after – to be honest, we felt that that wouldn't pass at Town Meeting – so we added the extra layer of bureaucracy, the Special Permit."

However, Mr. Steves continued, after meeting with the Town's shellfishermen, his board had been "very pleasantly surprised" by the latter's position that the Guidelines had not gone far enough and that the resource really needed to be protected in a manner more in line with what the Town of Edgartown had done with the Cape Poge District. "So as a board we unanimously voted to bring this back to you with a total prohibition [of non-municipal piers]," Mr. Steves concluded.

Ms. Goff, also of the Conservation Commission, testified that her board saw all the permit applications that came in and so were "aware of what is strong and what is good protection as opposed to what we feel is less strong." She spoke of the value of the relatively pristine pond system in question and of how families also enjoyed shellfishing there.

Ms. Goff explained that her board wished to prohibit the construction of non-municipal piers because most of the area of these ponds was viable for shellfish and eelgrass habitat. "We made a good effort to draft Regulations that would allow some piers by Special Permit," she said, "but the trouble is, when you leave some leeway, what some would call 'loopholes' – it's the aggressive, well-heeled real estate interests that know how to use those loopholes."

Ms. Goff added that things had changed on the Island and that land around the ponds was now so valuable that it got purchased and turned over many times. Thus, she said, there was the real possibility that owners would want to construct piers to increase the value of their property.

Ms. Goff went on, "We really want to protect the public interest in the ponds, to make the Regulations as clear as possible and as tight as possible." When they were first drafting the Regulations, she said, it had occurred to them that owners might try to prove that the piece of pond where their pier would be was not shellfish and eelgrass habitat; a worse scenario they had imagined was an owner trying to make the part of the pond adjacent to his land non-viable as habitat.

The Towns and the Commission would save money, Ms. Goff noted, because the new Guidelines would eliminate the incidence of challenges to denials of Special Permits for non-municipal piers. By agreeing to amend the Guidelines, she concluded, the Commission would be giving the voters a chance to decide the pier question themselves at Town Meeting.

**Steven Larson of Chilmark** stated that he had seen a lot of the beaches and harbors privatized and no longer accessible to fishermen. "I as a fisherman would like to support prohibiting piers but not floating docks, if people choose to do that," he said. "So that's where I stand on that."

**Chris Murphy of Chilmark** began by saying, "I don't want to stand up here and lecture you guys. Most of you know more about ecology than I do." Speaking not as a fisherman but as an advocate for the ponds in general, he emphasized what a wonderful resource they were and how all across the Island the ponds had been degraded to some extent.

"And what we've learned over the years," Mr. Murphy continued, "is that you can't regulate blueclaw crabs or hardshell clams by themselves. You have to look at the whole picture, and you can't look at one part of the pond and say, 'Gee, a dock here won't hurt anything here.' You have to look at the whole pond and say, 'Are the proliferations of docks going to degrade the quality of the pond?' My answer for that is 'Absolutely.' Even a municipal dock degrades it, but I think that you have to weigh the public use against the health of the pond and maybe you can have a little without destroying anything."

Mr. Murphy concluded, "So I think this is a great proposal. I wish it applied to all the ponds in the Town and hope someday it will." He added that he was happy to answer any questions from the Commission members.

Ms. Greene asked Steven Larson what he meant when he referred to floating docks. Steven Larsen replied, "I'm thinking of something like a mooring structure holding it, something that could be removed on a seasonal basis, not a fixed structure that is going to change, you know, the tidal flow or, you know, areas where people can fish or for recreational purposes. Responding to another question from Ms. Greene, Steven Lawson explained that people used the ponds for kayaking during the winter and early spring.

Ms. Ottens-Sargent referred to the *Staff Notes*, where it was stated that the Chilmark Board of Selectmen had voted in support of the Guidelines. "I'm curious," she said. "Is it the entire Board of Selectmen?" Mr. Doty answered that his board had written a letter and sent it to the Commission. "I felt obliged to report Alex [Preston]'s position because he would be here except he's working at another [meeting]." Ms. Ottens-Sargent repeated her question, and Mr. Doty replied that the vote had been unanimous.

"That vote was reconsidered, was it not?" inquired Ms. Greene. "No, we never reconsidered this in meeting," responded Mr. Doty.

Mr. Karney stood up once more and said he wished to emphasize the testimony he had offered at the Hearing on the Designation of the District. He reminded the Commission members that the detriments of piers included: shading and the loss of eelgrass beds; elimination of shellfish beds; alteration of water circulation and tidal flushing; increased

sedimentation; fragmentation of beach habitats; the leaching of wood preservatives; the obstruction of shellfish harvests; the possible increase in habitat for shellfish predators; an increase in boat traffic and boating impacts.

Regarding the last detriments, Mr. Karney provided some examples, which included: propwash; destruction of shallow water habitats, re-suspension of sediments, resulting in increased turbidity; and increased risks for contamination from boat paints, marine sanitation and petrochemicals.

"I just want to get the point across," said Mr. Karney, "that these docks have a huge potential in terms of, you know, having negative impacts on the shellfish."

Under "Prohibited Uses," Ms. Warner pointed to Item D, anti-fouling paint on floats. She wanted to know, she said, if chemical sealants on existing docks were included under that item. Many preservatives are basically biocides, commented Mr. Karney, so many of them would have negative impacts.

**C. Testimony on the Conformance of the Regulations to the MVC's Guidelines.**

Ms. Goff noted that the Town was considering adding to Item 3E in the *Staff Notes* under "Permitted Uses" a prohibition of the use of pressure-treated wood. She then referred the Commissioners to a separate document that Ms. Atkinson had distributed entitled *Draft Regulations (as amended Jan. 24, 2002) – Menemsha, Nashaquitsa and Stonewall Ponds Overlay District*. [See the meeting file for a copy.] The January 24 document, Ms. Goff said, included the prohibition of pressure-treated woods. Ms. Warner proposed that the Town add to the amended Item 3E the use of toxic preservatives and sealants in the maintenance of existing structures.

John Best, a Commission member at large from Tisbury, wondered if most of the piers already in place had on-going maintenance permits and so would not have to return to the Town for further permits. Would the owners of those pier retroactively not be allowed to use toxic preservatives or pressure-treated wood, and how would the Conservation Commission know whether or not the owners were using such toxic materials? he asked. Mr. Steves explained that the owners had to apply to the Conservation Commission for any maintenance that was more than minor.

Ms. Sibley asked if there were any more additions to the proposed Regulations, since the Commission had to vote on whether the Regulations conformed with the MVC Guidelines. Mr. Meegan noted that the purpose of the Hearings the Planning Board had had was for its members to find out what people wanted, and the prohibition of the use of toxic materials was one of the things the public wanted.

After a brief discussion, Ms. Sibley suggested that the Commission's Public Hearing be recessed while the Planning Board settled on final language for its additions to the Regulations. "We have to go on what's in front of us," she remarked.



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Mr. Israel referred to Item 3E in the *Staff Notes* under "Permitted Uses," where it was stated that the following was permitted: "Maintenance of any fill or structure in lawful existence at the time of adoption of this regulation, providing no work extends beyond the licensed footprint." This meant to him, he stressed, that the owners of pier already permitted could continue to use toxic preservatives.

Ms. Greene objected to the fact that the Notice of Public Hearing had not referred to the sheet of amended Regulations distributed that evening and that the Commission should only be hearing what had already been submitted for the record. Ms. Sibley deferred to Executive Director Charles Clifford, asking him if the Commission could only hear the Regulations that had been submitted at the time of the Public Hearing Notice. Mr. Clifford replied that the Commission could allow the Town to amend the Regulations so long as the Commission was of the opinion that said Amendments were minor points and so long as the public heard the Amendments.

Christina Brown, a Commission member at large from Edgartown, asked whether they were still talking about an Amendment to the Commission's Guidelines. No, answered Ms. Sibley, they were talking about the Conformance of the Regulations to the Guidelines.

Ms. Greene wondered if in fact it would be improper to include in the District's Regulations rules that were already part of the Department of Environmental Protection's regulations. "I wouldn't call that improper," responded Mr. Clifford, adding "You're simply reinforcing what DEP said."

The Hearing Officer asked the Commission members to focus their attention on whether or not there was anything in the amended Regulations that did not conform to the Commission's Guidelines and to question it at this point before it was too late.

Responding to a question from Planning Board member Mitchell Posin, Ms. Sibley explained that some changes to the proposed Regulations would have to have a corresponding change to the Guidelines in order to achieve Conformance between them.

Mr. Meegan, the Planning Board Chairman, related that the members of his board had been on a sort of "fishing expedition" amongst themselves, gathering information and feedback from people in the Town. Ms. Sibley again stressed that the Commission had to vote on the question of Conformance and to do that they needed the Town's Regulations in a finished form. Mr. Meegan suggested that the Hearing be suspended while his board discussed possible Amendments. Ms. Warner pointed out that the Hearing Officer did not have to close the Hearing that evening.

Addressing the Planning Board Chairman, Mr. Zeltzer wanted to know if his board was suggesting an expansion of municipal piers. "I don't understand that question," replied Mr. Meegan. Mr. Zeltzer clarified his question: "You're prohibiting non-municipal piers."

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The converse to that is the expansion of municipal piers, and I'm trying to get a picture of where you want to take this." Mr. Meegan answered that municipal piers were a permitted use. Mr. Walton explained that municipal piers were being permitted in case sometime in the future the Town got a parcel on the ponds.

Responding to a question from the Hearing Officer, Mr. Clifford related how the Public Hearing could be closed for the purposes of its first two elements – the Amendments to the boundary and the Guidelines – but could be continued with regard to the Conformance question while the Planning Board finalized the Regulations. Ms. Sibley then proposed to do just that and asked if anyone had a problem with that plan.

Ms. Goff said, "I'd like to see us just finish up tonight. And it seems that what Kate [Warner] suggested would be very easily incorporated ... by just saying, 'No pressure-treated wood or toxic preservatives are to be used.'" Ms. Warner reminded her that it would also have to be added under "Prohibited Uses." Well, then you could just put it in both places, responded Ms. Goff.

Mr. Meegan said that what he would like to see was to have everybody address the Planning Board regarding any further Permitted Uses or Prohibited Uses that they would like to see added. The Planning Board would be meeting the following Monday, he said, and the Public Record could be kept open until then.

Ms. Greene expressed concern that Ms. Warner's recommended wording was not precise enough. Ms. Warner suggested that Mr. Karney provide the wording.

Mr. Zeltzer wondered how many non-municipal piers had been built in the ponds over the last 20 years. Mr. Meegan answered that the total was 17 piers and that in the last year alone there had been three applications – two for new piers and one for an extension of an existing pier.

Regarding Ms. Greene's concern about the preciseness of Ms. Warner's wording, Ms. Ottens-Sargent asked Mr. Clifford if the Town could make the Regulations less restrictive at Town Meeting. "No," replied Mr. Clifford, "once you vote Conformance with the Regulations, they cannot make them less [restrictive]. They can be turned down..."

Ms. Ottens-Sargent suggested that with Mr. Karney's help, the Planning Board could come up with the proper wording that evening. Ms. Atkinson noted that that would be preferable because of the time constraints. But the Planning Board had asked to leave the Written Record open until Monday, Ms. Greene pointed out.

Ms. Sibley then recommended that the Special Meeting recess while the Planning Board met and determined any further Amendments to the Regulations. She also described the other options available to them.

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Mr. Donaroma made some observations. Everyone seemed to be in agreement with the Amendment to the boundary and as well with the Amendment to the Guidelines. The subject of floating docks being permitted had arisen and everyone seemed to be in agreement with that. "We have a room full of people in agreement," he remarked.

Mr. Donaroma continued: "Creosotes gets added to the thing and chemicals – something that none of us in here seem to know much about except for the biologists – and everything goes haywire." He pointed out that there was a Board of Health Agent present as well as a biologist and that there must already be rules about pouring dangerous substances into the ponds. "Does the Planning Board really need to supersede this?" he wondered, adding, "Maybe I'm wrong, maybe we do. We're getting into an area where we don't need to be."

Ms. Warner began to counter Mr. Donaroma's argument when Ms. Sibley announced that Mr. Clifford had requested a short recess so that he could speak with the Planning Board. Ms. Sibley then called for a break in the Public Hearing. The time was 8:50 p.m.

At 9:01 p.m. Ms. Sibley briefly re-opened the Commission's Public Hearing while she explained that it had been decided that the Planning Board would continue with its Hearing and work out the Amendments to the Regulations while the full Commission's Hearing recessed.

**Chilmark Planning Board Public Hearing on Amendments to the Regulations.**

Mr. Meegan described how the Planning Board was going to discuss and settle on any Amendments to the Prohibited Uses and then close its Hearing, at which point the Commission's Public Hearing would be re-opened.

Mr. Meegan began with Item 5, Prohibited Uses of the Draft Regulations amended January 24. He began to read through those uses, when he was stopped at Item 5D (which prohibited anti-fouling paint on floats) by **Stanley Larsen of Chilmark**, who wanted to know if such paint would be prohibited on the bottoms of boats. "I think you ought to leave the bottoms of the boats alone," said Mr. Murphy, explaining, "That means any boat that comes from anywhere to the pond, you'd have to police. It would be an impossible situation." Item 5D was left as it stood, as was Item 5E.

Mr. Meegan added the following phrase to Item 5F: "... or toxic preservatives or materials, to be determined by the Conservation Commission."

Stanley Larson argued further for the prohibition of anti-fouling paint on boat bottoms, but only for the bottoms that moored on the ponds all summer. Ms. Greene reminded him that the board was addressing *piers* with these Regulations. Chairman Vercruysse suggested the wording "no anti-fouling paint on boats moored seasonally." After some discussion, the words "for structures" were added, so that Item 5E in its entirety read as

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follows: "Use of pressure-treated wood or toxic preservatives or materials for structures, to be determined by the Conservation Commission."

Mr. Meegan read aloud Item 5G about the disposal of shells. Mr. Murphy wanted to know, if a scalloper threw some shells overboard, would he be violating that rule? Ms. Goff referred him to Item 3B under "Permitted Uses," where it was stated that "... placement of cultivation materials such as rocks and shells may be permitted, as directed by the Shellfish Warden." Mr. Murphy argued that the Town really had to make clear what it was they were trying to say. After some discussion, a consensus was reached that Item 5G under "Prohibited Uses" would be scrapped.

**Matthew Poole of Chilmark** had a question about Item 5A under "Prohibited Uses," which read, "Discharge of hazardous substances or effluent from septic treatment." What exactly was covered by the term "septic treatment"? he wondered. Was that referring to effluent from residential systems or from marine holding tanks? Mr. Walton answered that it was meant to refer to marine vessels. Mr. Poole suggested the wording "Discharge of hazardous substances or effluent generated from marine sources."

A discussion ensued, during which the terms like "human waste" and "sewage" were bandied about. Mr. Murphy and Ms. Greene pointed out that the Board of Health already regulated effluent discharged from residential septic systems. Mr. Donaroma stressed that the Planning Board members were arguing over the Town's internal issues, and he asked Mr. Clifford if the board could add on minor things like the 5A wording after the Commission had voted on the Conformance issue. He also questioned whether this point even had to be included in the DCPC.

Ms. Sibley emphasized that Item 5A was part of the Town's Regulations and that the Commission could not vote on Conformance until the Regulations were set. Mr. Clifford pointed out that the Commission did not have to approve the Regulations in detail but simply had to agree that the "system" of the Regulations in general was in Conformance with the MVC Guidelines.

The board finally settled on Mr. Poole's wording – "Discharge of hazardous substances or effluent generated from marine sources." Ms. Warner noted a typographical error on page 2 of the Draft Regulations: the number 3 before "Prohibited Uses" should be changed to the number 5.

Mr. Stanley Larsen referred to Item 5B – "Use of a houseboat or barge as a dwelling unit." What about, say, dozens of sailboats entering the ponds and staying overnight? he wondered. Mr. Meegan responded that boats were not allowed to stay overnight in Nashaquitsa Pond. Ms. Greene urged the Planning Board to include some verbiage that would allow an overnight stay for storm protection. Mr. Meegan agreed that an overnight stay could be permitted in the case of an emergency.

The Planning Board Chairman then asked for a Motion To Approve The Draft Regulations As Amended. Said Motion was supplied and duly seconded and carried unanimously by voice vote.

An unidentified Planning Board member made a Motion To Close The Planning Board Hearing, duly seconded. This Motion carried unanimously by voice vote. The time was 9:21 p.m.

**C. Conformance of the Regulations to the MVC's Guidelines [continued].**

The Martha's Vineyard Commission's Public Hearing resumed. Mr. Meagan said, "The Planning Board is pleased to announce we've gotten through the effluent." The Planning Board Chairman pointed out a typographical error on page 2, Item 4B of the Draft Regulations: The word "adopted" should be changed to "amended." He then read through the other Amendments to the Draft Regulations that his board had just agreed upon.

With no further questions or comments from Commission members, Ms. Sibley closed the Public Hearing at 9:28 p.m.

**Discussion/Vote: Wild and Scenic North Shore DCPC –  
Conformance of Regulations to the MVC Guidelines.**

*[Mr. Athearn returned to the meeting room for the vote on the Conformance of the Wild and Scenic North Shore DCPC Regulations. Thus, the Commission members present for this segment of the Special Meeting were: J. Athearn; J. Best; C. Brown; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]*

Chairman Vercruysse took the gavel for the remainder of the Special Meeting. Mr. Israel made a Motion To Move To Item 5, Possible Discussion, duly seconded by Mr. Donaroma. Mr. Israel then immediately made a Motion To Move To Item 6, Possible Vote, duly seconded by Mr. Donaroma.

The Chairman suggested that future moves to Items 5 and 6 would be assumed. He explained that he would be going item by item through the lists of questions to be voted on that appeared on the Agenda. *[See the meeting file for a copy.]* Turning to discussion on the first item – Wild and Scenic North Shore DCPC Conformance of Regulations to the Commission's Guidelines – Ms. Sibley offered the observation that the Regulations had hewn closely to the Guidelines, which had not allowed for much leeway.

Mr. Best made a **Motion That The Regulations Of The Four Towns In The Wild And Scenic North Shore DCPC Were In Conformance With The Commission's Guidelines**, duly seconded by Ms. Warner.

Ms. Greene stated that she truly had a problem with the Town of Chilmark retaining the word "lawful" in the phrase "any fill or structure in *lawful* existence" under "Permitted Uses." *[See the discussion on page 2 of these Minutes.]* Since the Towns of Aquinnah, Tisbury and West Tisbury had deleted it on the advice of Counsel, she explained, she was concerned about the Commission's deeming Chilmark's Regulations as being in Conformance with the Guidelines with the word "lawful" left in.

Ms. Sibley suggested that the Motion state "with or without the word 'lawful.'" This was agreed to, and Mr. Best amended his Motion to the following: **That The Regulations Of The Four Towns In The Wild And Scenic North Shore DCPC Were In Conformance With The Commission's Guidelines With Or Without The Word "Lawful" Included In The Phrase "Any Fill Or Structure in Lawful Existence" Under The "Permitted Uses" Section Of The Regulations.** Ms. Warner, the seconder, accepted said Amendment.

Chairman Vercruysse checked with Mr. Clifford if it was proper to vote on the Motion by voice. Mr. Clifford indicated that unless the vote was close, a roll call vote was not necessary. The Chairman then conducted a voice vote on Mr. Best's amended Motion, which carried unanimously, with 15 Ayes, no Nays and none Abstaining.

**Discussion/Vote: Amendment to the Boundaries of the  
Menemsha-Nashaquitsa Ponds District.**

*[Mr. Athearn left the Special Meeting at this point. Thus, the Commission members seated and voting for the remainder of the Meeting were: J. Best; C. Brown; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]*

Ms. Brown made a **Motion To Amend The Boundary Of The Menemsha-Nashaquitsa Ponds DCPC To Include Stonewall Pond**, duly seconded by Ms. Warner. There being no discussion, said Motion carried unanimously by voice vote, with 14 Ayes, no Nays and none Abstaining.

**Discussion/Vote: Amendment to the MVC Guidelines for the  
Menemsha-Nashaquitsa-Stonewall Ponds District.**

Chairman Vercruysse asked for discussion on the Amendment to the Commission's Guidelines for the Menemsha-Nashaquitsa-Stonewall Ponds Districts of Critical Planning Concern.

Mr. Zeltzer prefaced his remarks by noting that he had always advocated putting confidence in Town Boards. When the Nomination for the District had first come before them, he continued, the construction of new non-municipal piers was to be allowed by Special Permit from the Zoning Board of Appeals. Now, he emphasized, some members of Town Boards were classifying the ZBA process as a loophole and so were requesting a

total ban on new non-municipal piers. "I'm not sure that I would consider the ZBA a loophole," he commented.

Mr. Zeltzer went on that he had been troubled by the presentation that evening. Having had some months to prepare the Regulations, the Planning Board had come before the Commission trying to piece together the wording, he said, "which, I suppose, is okay, if it's in Public Hearing. It's wasn't done behind closed doors. But again, I'm not sure that it was done with all the thought that one would hope would go into a DCPC."

Lastly, said Mr. Zeltzer, the Commission had been shown a map which indicated the new boundary for the District. However, he stressed, there was no possibility of putting a dock in Stonewall "because if it isn't high tide, you can't kayak across the pond. You can walk across it virtually anytime." The same map showed a whole series of docks around the Menemsha Pond shoreline, he related, adding, "It would be absolutely impossible to put a dock in. The dock would have to be 150 yards ..."

Mr. Zeltzer asked the Commission to consider that there had been only three permit applications in the past year and only 17 piers approved in the last 20 years. "I just have trouble understanding where this whole thing is going," he remarked, "and why and what the purpose of it is if we're protecting against something that doesn't have to be protected."

Mr. Zeltzer concluded that he liked the original idea of requiring a Special Permit. There were places in the ponds, he said, where the construction of piers would not impact shellfish and eelgrass habitat. "And I think that the ZBA in most Towns ... do an honorable job and check the site, they look at it. It seems to me to be a more rational approach, to let the ZBA do it, than to just flat-across-the-board say no."

Ms. Sibley observed that one of the difficulties they were facing was that the DCPC process did not "easily lend itself to offer the Town a choice, except yes or no. So we have been asked by the Town to come, to change our Guidelines to allow them to be more restrictive, and I think that it's pretty tough to get the two-thirds vote at Town Meeting. If there's a serious problem with this, presumably they will reject the Regulations."

Ms. Sibley asked Mr. Clifford if the Town would have another chance to introduce District Regulations at Town Meeting if the current ones proposed were not passed this spring. Mr. Clifford indicated that the Town had plenty of time.

The Wild and Scenic North Shore DCPC Regulations banning piers had been easily accepted by the Commission, Ms. Sibley continued. "We were willing to ban piers because essentially they don't look good and don't seem wild like the North Shore. And now we have a request to ban piers because they might, there's reasonable evidence that they pose a threat to the shellfish and the finfish in the ponds. Certainly the Town isn't unanimous about this, but we seem to have very strong support for it tonight."

Ms. Sibley then stated her support for the Amendment to the Guidelines that would allow the Town to go forward with this strong prohibition if they chose to do so.

Mr. Israel stated that he saw no inconsistency in the revised Draft Regulations with the Commission's Guidelines. Ms. Greene pointed out that the Commission was discussing the Amendment of the Guidelines and not the Conformance of the Regulations with the Guidelines. Mr. Israel then offered the opinion that the Town of Chilmark would be the ultimate arbiter of the issue before them.

Mr. Best observed, "I didn't hear anyone from the Town give testimony commenting against having this regulation of no piers." In his almost two decades of experience dealing with piers on the Tisbury Conservation Commission, he continued, his board had been in situations where it had had to approve them, "because we knew if we didn't approve them, if we turned them down, we'd be superseded at the State level anyway."

"I don't see the Zoning Board of Appeals being conservation-oriented necessarily," Mr. Best argued, "and I see plenty of cases where [the] Zoning Board of Appeals may or may not be influenced by other interests in Town." For a Commission member to say that there were not going to be any more piers, so why should they ban piers, Mr. Best responded, "Why not? It's obvious there *could* be more piers there."

Mr. Best went on, "The map isn't an issue. I don't think anyone here is going to make a decision as to whether we should be allowing piers or not because of the map that was circulated around. I've seen applications before me that went out to 2 feet of depth. It's not considered navigable water, but for somebody with a canoe or kayak, that's what they wanted."

It seemed to him, said Mr. Best, that the Town had been virtually unanimous from the point of view of testimony in support of the ban – "I say, 'Why give it an out by Special Permit if people feel that it's important enough not to have any exemptions?' That's the way I feel I should vote."

Ms. Ottens-Sargent took the position that development had taxed the Island's resources and habitat, "and I think that's partly clearly one of the main motivators behind this DCPC." She related that she had been really happy to see the Chairs of the Aquinnah Conservation Commission and Planning Board present that evening, "because I'm hoping, even if we don't have a lot of docks in Aquinnah, Menemsha Pond, who's to know what the future will bring?"

In addition, having heard Mr. Karney as well as the fishermen of Chilmark voice their concerns, Ms. Ottens-Sargent stated that she was "very comfortable supporting this Amendment."



Lastly, Ms. Ottens-Sargent pointed out to Mr. Zeltzer that "the Selectmen, the Conservation Commission and the Planning Board had all unanimously by vote supported this Amendment." Furthermore, the year before there had been three applications in a single month, she said. "That's not the truth," said Ms. Greene. "So what is the truth?" asked Ms. Ottens-Sargent. Mr. Zeltzer replied that the three applications had been over a one-year period. The Chairman requested that they not debate the point.

Ms. Ottens-Sargent said that in any event the Town's fear of an influx of pier applications had motivated the District Nomination and that Town Meeting would be the appropriate venue for a discussion of the details that Mr. Zeltzer and Ms. Greene were concerned with.

Ms. Greene began by stating, "I have not been in favor of this Amendment." Although she was aware, she continued, that two Selectmen had voted for it, she did know one Selectman who had asked the board to reconsider that vote. "He wasn't able to come tonight," she said, "and Warren [did] say tonight that Alex [Preston] did not agree with what he was saying."

Ms. Greene continued, "I'm very disappointed in Pam Goff's testimony tonight, which screamed of discrimination. It could get us into a lot of trouble if we in any manner presume the reason that we're voting this is so that the Board of Appeals doesn't have to deal with somebody who has deep pockets and can come to them and bring in a lawyer and say, 'I want a dock.' Because she point-blank said it's the rich people that can do this. And this could get us into big trouble. So I want you to think very carefully about how you'll defend yourself if you go for this."

Mr. Woodruff remarked that he found it interesting that the Commission was talking about a public body of water, and having been chased more than once off private beaches, it had occurred to him that all this private property had private piers in the public water. "So I feel like this is certainly an opportunity for the Town to really look and decide amongst themselves what to do with this public body of water," he concluded.

Ms. Sibley referred to Mr. Best's mention of a Superseding Order of Conditions from the State. "I think we ought to step back and ask why the Town even approached the Commission for a DCPC that would regulate docks, let alone at this point prohibit them," she said, "and they were apparently advised by Town Counsel that if they were operating under DCPC Regulations and they rejected a permit for a pier, they would be on stronger ground."

Admittedly, continued Ms. Sibley, there would likely be a tussle on the North Shore regarding whether or not piers could be banned through the DCPC or if the State could, in fact, issue a Superseding Order of Conditions. "We'll find that out," she said, "but I think that part of the reason that the Town came back to us and asked us for Guidelines, to change our Guidelines in a manner that would allow them to limit piers altogether, was

that they felt it would be much clearer and be a much stronger legal ground than if it was a Special Permit and the Board of Appeals sometimes gave them and sometimes didn't give them. Then someone who was denied would have more opportunity to challenge."

"So this is a clear, stronger test of when the DCPC process actually allows the Town to simply say no – permanently – to something which they feel is a threat to their shellfish resources," Ms. Sibley concluded.

Ms. Greene pointed out that State law going back to the 1600s allowed private piers in public waters.

Mr. Israel disagreed with Ms. Greene that the testimony of one of the District Nominators could put the Commission in legal jeopardy. What he had heard, he said, was that "this was a popular area that had been under a lot of pressure because of a lot of development and therefore the desirability of having piers [had increased], that's what I heard."

Mr. Best observed, "With all due respect to my fellow Chilmark Commissioners, I feel that they are hopelessly out of touch with their community, and I'd like to move to Item 6. We can beat this thing to death."

Mr. Zeltzer declared, "I'm not in favor of all the piers running rampart in the pond. I have probably spent more time on these ponds than all of the people in the room put together." He changed the last phrase to "around this table." He continued that Nashaquitsa Pond was virtually built up and that islands had had piers for a very long time. In Menemsha Pond, he said, there were even fewer opportunities to build piers.

"So I don't think it's the issue, a huge issue," Mr. Zeltzer went on. "There are a couple of landowners that have very large tracts of land, and maybe within these tracts there is a [inaudible] place to have them. Could they live with a float? Sure. Am I opposed to this DCPC? No, I'm not opposed." But it ticked him off, he said, when a person who did not know a thing about that area told him he was out of touch with the people of his Town.

Mr. Zeltzer then described how he had been approached at the post office, the Texaco station and the local delicatessen by people who were not present that evening for whatever reason and who were pretty upset. "You don't rush to judgment if you don't know what you're talking about," he said.

The bottom line was, Mr. Zeltzer concluded, that he would support the DCPC one way or another but that he just preferred that the ZBA have the option of issuing a Special Permit for a pier.

Ms. Brown observed that the Commission was a regional body which was charged with protecting the Island's resources. "I think that prohibiting the piers in these waters is consistent with 831, with our charge to protect against inappropriate development," she said. "We're always asked by 831 to make some judgment calls." Ms. Brown spoke

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briefly about the remarkable success of the Cape Poge DCPC, which piers had been banned.

Ms. Brown concluded, "I think the prohibition of piers is an Island-wide regional issue and it's consistent with our charge.

Mr. Israel remarked that he would not pretend to know the politics of Chilmark. Having said that, he continued, the ZBA would still be part of the process. Mr. Zeltzer and Ms. Greene informed him that this was not true, since one would not be able to apply to the Board of Appeals for a Special Permit.

Mr. Best began to make a Motion, then hesitated and invited Ms. Sibley to do it. Ms. Sibley made a **Motion To Adopt The Commission's Amended Guidelines As Shown On Page Four Of The Staff Notes**, duly seconded by Roger Wey, the County Commission representative. Said Motion carried by voice vote, with 13 Ayes, no Nays and one Abstaining (Ms. Greene).

**Discussion/Vote: Conformance of the Regulations with the MVC's Guidelines.**

Ms. Sibley made a **Motion That The Town Of Chilmark's Regulations As Presented That Evening For The Menemsha-Nashaquitsa-Stonewall Ponds DCPC Were In Conformance With the Commission's Amended Guidelines**, duly seconded by Ms. Brown.

Ms. Greene said that she wished to delete Item 5F of the revised Draft Regulations because the materials that were being banned could also be applied to the bottoms of boats. The item did not make clear, she said, whether it was referring to a boat, a raft or whatever.

A discussion ensued, and the Chairman suggested that perhaps the item could be tweaked a little bit to make its meaning more explicit. Mr. Best noted that the tweaking could be done at Town Meeting. "All we want to do is give them the ability to do that at Town Meeting," he said, adding, "They can deny it at Town Meeting, too, and we can't go back and force it down their throats."

Mr. Israel said that he thought the Town was free to make a regulation more restrictive than the Commission's Guidelines but not less restrictive. Mr. Donaroma remarked that he agreed with Ms. Greene and that the Item 5F should be taken out. The Town could put it back if it wanted to, he said. But then they would have to return to the Commission, argued Ms. Sibley.

A number of Commission members began to talk at once, and the Chairman gavelled them down. Ms. Sibley offered the opinion that the language of Item 5F was in fact consistent with the Commission's Guidelines. "It may be nearly impossible to enforce," she noted, "but I don't think that that's what's before us."

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Mr. Zeltzer reiterated that he was troubled by the fact that the Regulations were being pieced together at this late point without the Commissioners having a chance to think it through. He added that Mr. Israel's comment about the Town's being able to make the regulation less restrictive was well taken. He was corrected by Ms. Sibley and Ms. Greene – the Town could only make the Regulations *more* restrictive once the Commission had voted on them.

Ms. Sibley amended her Motion thus: **That The Town Of Chilmark's Regulations For The Menemsha-Nashaquitsa-Stonewall Ponds DCPC As Presented With Or Without Item 5F Were In Conformance With the Commission's Amended Guidelines.** She then asked Mr. Clifford if under this Motion the Town could modify Item 5F. "As long as it's not significantly changed so that it becomes non-conforming," answered Mr. Clifford, adding, "They can clarify the wording and get the definition the way they want it." "That's the Motion," said Ms. Sibley.

Ms. Warner recommended another approach: to insert in Item 5F the words "for structures" so that it read as follows: "Use of pressure-treated wood or toxic preservatives or materials *for structures*, to be determined by the Conservation Commission." She pointed out that if the Town wished to add boats later, they could. "That makes it more restrictive. That's their choice," she said.

"Can we change their wording, Chuck?" Ms. Greene asked Mr. Clifford, who replied that the Commission could accept the Regulations as written or amend the Regulations or reject the Regulations. "I'll accept 'for structures,'" said Ms. Greene.

The discussion about the wording of Item 5F continued. Ms. Greene reminded Ms. Sibley that her Motion had to include the change of the word "adopted" to "amended" in Item 4B and that Item 3E had to be changed to be consistent with the revised Item 5F. Mr. Israel remarked that he agreed with the wording suggested by Ms. Warner for Item 5F.

Ms. Sibley amended her Motion again: **That The Town Of Chilmark's Draft Regulations For The Menemsha-Nashaquitsa-Stonewall Ponds DCPC – With The Word "Adopted" Changed To "Amended" In Item 4B; With Item 5F Amended To Read "Use Of Pressure-Treated Wood Or Toxic Preservatives Or Materials For Structures, To Be Determined By The Conservation Commission; With Item 3E Amended To Read "Maintenance Of Any Fill Or Structure In Lawful Existence At The Time Of Adoption Of This Regulation, Providing No Work Extends Beyond The Licensed Footprint And No Pressure-Treated Wood Or Toxic Preservatives Or Materials For Structures, As Determined By The Conservation Commission, Are Used; And With Item 3A Amended To Read "Discharge Of Hazardous Substances Or Effluent From Marine Sources – Were In Conformance With the Commission's Amended Guidelines.** Ms. Brown amended her second.

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Chairman Vercruysse conducted a voice vote on said Motion, which carried with 13 Ayes, no Nays and one Abstaining (Ms. Greene).

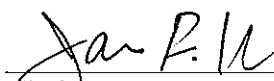
**Miscellaneous Announcements.**

The Chairman reminded the Commissioners about the joint meeting of the Cape Cod, Nantucket and Martha's Vineyard Commissions on Friday, January 25.

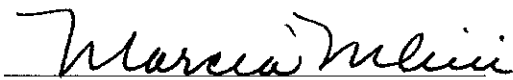
Mr. Clifford announced that the Commission members would be meeting with Commission Counsels the following Monday at 5:00 p.m. at the Commission Offices to discuss litigation.

Mr. Zeltzer reminded the members about the testimonial luncheon for Mr. Clifford on February 3.

Ms. Warner made a Motion To Adjourn, duly seconded. The Special Meeting adjourned at 9:56 p.m.

  
Chairman

April 24, 2002  
Date

  
Clerk-Treasurer

May 23, 2002  
Date

PRESENT: J. Athearn; J. Best; C. Brown; M. Donaroma; J. Greene; T. Israel;  
M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse;  
K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.

ABSENT: A. Bilzerian; M. Cini; E.P. Horne; J.P. Kelley; C.M. Oglesby;  
and R.L. Taylor.

*[These Minutes were prepared by Staff Secretary Pia Webster using her shorthand notes as well as a tape recording of the Meeting.]*